Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	GN Docket No. 93-252
Implementation of Sections 3(n) and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF ONECOMM CORPORATION

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TABLE OF CONTENTS

SUMMARY

The Commission must revise the existing licensing scheme for Special Mobile Radio ("SMR") services to ensure regulatory parity with similar Commercial Mobile Radio Services ("CMRS") providers. A geographically-based licensing model and greater operational flexibility are critical first steps toward this end. This approach could minimize interference problems and eliminate the massive number of applications being filed with the Commission by enhanced SMR ("EMSR") providers as they create wide-area operating systems. OneComm is working within industry groups to develop a well-considered regulatory framework for addressing the rapidly changing SMR industry. OneComm looks forward to working with the Commission to ensure that the enormous competitive potential of this industry can be realized.

OneComm opposes the Commission's proposal to impose an across-the-board spectrum cap on CMRS services. The service-by-service analysis required by this approach will quickly dissolve into an administrative nightmare. While the 40 MHz spectrum cap placed upon PCS licensees may have been justified by the extensive record created by the

Commission in the PCS proceeding, there is sparse evidence to support a "one-size-fits-all" cap to CMRS providers as a whole. As important, the existing SMR licensing scheme and early developmental stages of the SMR industry make it almost impossible for the Commission to accurately and fairly gauge ESMR providers' spectrum usage and how that usage should be calculated in the context of any cap.

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COMMENTS

OneComm Corporation ("OneComm") submits these comments in accordance with Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. §1.415, in response to the Further Notice of Proposed Rulemaking ("FNPRM") adopted by the Commission in the above-captioned proceeding on April 20, 1994.

OneComm's comments will 1) focus on the critical need for the Commission to restructure the licensing scheme for Specialized Mobile Radio ("SMR") service providers in order to ensure regulatory parity with other Commercial Mobile Radio Services ("CMRS"), and 2) set forth OneComm's opposition to the imposition of an across-the-board CMRS spectrum cap.

INTRODUCTION

OneComm[1] is a leading provider of integrated wireless communications services in the United States. Following completion of certain previously announced acquisitions of SMR stations, its operating territory will encompass 54 million people in a 23-state service area, including 10 of the top 30 metropolitan areas of the country. OneComm is the leading provider of SMR services within its service regions and anticipates providing SMR services to more than 130,000 people across the extended service area described above.

OneComm is building and implementing a state-of-the-art digital wireless enhanced specialized mobile radio ("ESMR") network that will provide integrated communications services throughout its extended service area. This system will combine the features of cellular telephony, alpha-numeric message-paging and two-way radio in a single mobile or portable handset. The system also will be capable of high-speed mobile data transmission, in both circuit and packet switched format.

OneComm is able to offer this highly-innovative integration of services through the use of Multi-Service

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1 OneComm, formerly CenCall Communications Corp., was established in 1989 and completed an initial public offering of shares in 1993. On May 26, 1994, the company received approval from the shareholders to change its name formally from CenCall to OneComm Corporation

Integrated Radio System ("MIRS"), which allows multiple use of each radio frequency, increasing system capacity up to 15 times over traditional analog equipment. Through agreements with other companies using MIRS, OneComm anticipates providing roaming features for its customers to allow seamless access to the digital network across the country.

I. TECHNICAL, OPERATIONAL AND LICENSING RULES

A. The Commission Must Establish A Revised Framework For Licensing 800 MHz SMR And ESMR Carriers

With regard to the technical and operational rules that will govern the various classes of CMRS providers, significant changes are required to enable carriers to provide "substantially similar" services in a manner that ensures competition and provides the regulatory consistency envisioned by the Budget Act of 1993.[2] As the licensing schemes for Part 22 services and personal communications services ("PCS") services have been developed and refined by the Commission, it has become increasingly clear that the licensing concepts developed for the SMR industry over 20 years ago no longer accommodate the needs of today's increasingly mobile wireless communications user. As a result, the ability of SMR and ESMR operators to offer

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2 FNPRM at ¶ 22; Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b), 107 Stat. 312, 392 (1993)(Budget Act).

substantially similar services to Part 22, PCS and other emerging CMRS providers will be seriously impaired if the licensing rules applicable to SMR and ESMR systems are not revised to recognize the changed circumstances facing the industry and the regulatory transition mandated by Congress.

B. 800 MHz SMR Licensees Require A Mechanism For Moving To Geographically-Defined Licenses

The Commission has long recognized the value of assigning geographically-defined licenses for the cellular industry and has seen the benefits of the operational flexibility given to Part 22 licensees to respond to the changing needs of the users they serve.[3] These concepts must be applied to all CMRS providers that offer substantially similar services to the public as common carriers.

In addition, minimizing the problems associated with co-channel and adjacent channel interference is critical to ensuring that the highest quality transmissions can be provided within each service. Furthermore, the cumbersome licensing procedures that are in place for SMRs and ESMRs today encourage the filing of massive numbers of applications by operators attempting to protect their

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3 Cellular Communications Systems, 89 F.C.C. 2d 58, 86-89 (1982); Amendment of Parts 2 and 22 of The Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, 3 FCC Rcd 7033 (1988).

systems from interference by others. A geographically-based licensing scheme would eliminate this problem and enable the Commission to more efficiently utilize its resources. The sheer volume of applications necessary to create a wide-area ESMR system under existing rules ensures processing problems and delays for the Commission's licensing staff as well as licensees. Hence, the Commission must adopt a plan for implementing changes to existing licensing rules that acknowledge the evolution of SMR and ESMR service offerings to achieve consistency among the CMRS services.

C. The Commission Must Coordinate Technical, Operational Or License Application Rule Changes For 800 MHz SMR and ESMR Systems With Wide-Area Licensing Rule Changes

OneComm, through its membership in the American Mobile Telecommunications Association ("AMTA"), participated in the formulation of the proposal that was adopted in part by the Commission when it drafted the Notice of Proposed Rulemaking in PR Docket No. 93-144,[4] The AMTA proposal attempted to address the issues facing SMR and ESMR licensees at that time. In recognition of the relevance of the issues raised in Docket 93-144, the Commission has incorporated the comments filed by parties in that

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4 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rulemaking, PR Docket 93-144, 8 FCC Rcd 3950 (1993).

proceeding in this docket. However, the circumstances that motivated AMTA's submission and the solutions suggested in Docket 93-144 have been significantly altered by subsequent industry developments. For example, numerous industry mergers have been consummated and tens of thousands of SMR license applications have been filed with the Commission. Most industry observers believe that Commission approval of these applications (after the laborious task of application processing) will exhaust virtually all of the usable spectrum in the SMR and ESMR eligible frequency pools.

Consequently, the Commission must develop an independent record based on the new realities of the SMR and ESMR industry prior to adopting the changes necessary to rationalize the SMR rules. For example, the full licensing of the 800 MHz SMR band through traditional SMR and wide-area ESMR filings may provide the basis for the relicensing of this band without disrupting the legitimate expectations of licensees while promoting regulatory parity and discouraging speculation in SMR licenses. Any such relicensing must provide a mechanism for all SMR and ESMR licensees to configure their portion of the 800 MHz SMR channels in a way that maximizes consistency with other types of CMRS systems and provides incentives for using this spectrum in more efficient ways to ensure the provision of

the highest possible quality service to the largest number of users.

Through AMTA and in other fora, industry participants are discussing possible solutions to the complex challenges that relicensing SMR and ESMR systems poses. These discussions have taken on new urgency in light of the opportunity posed by the CMRS definition adopted by the Commission and the phased transition provided by the Act. OneComm looks forward to working with the Commission to ensure that the enormous competitive potential of this industry is realized.

II. CMRS SPECTRUM AGGREGATION CAP

A. The Commission Should Not Adopt An Across-The-Board CMRS Spectrum Cap

The Commission has tentatively concluded that the spectrum limits placed upon both broadband and narrowband PCS licensees should serve as a model for calculating a general CMRS spectrum cap.[5] The Commission apparently is concerned that a CMRS provider's accumulation of spectrum for "substantially similar" services can reach a threshold where new competitive entrants are thwarted.

OneComm opposes an across-the-board CMRS spectrum cap. The Commission already has imposed a spectrum cap on the 120 MHz of newly allocated spectrum for PCS, and on

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5 *See* FNPRM at ¶ 93.

cellular carriers that seek PCS licenses. OneComm believes that the PCS cap more than adequately addresses the Commission's concerns about a single carrier's ability to capture excessive amounts of PCS spectrum and urges the Commission to refrain from adopting additional CMRS caps - certainly not at this time. The remaining spectrum blocks for other CMRS services do not represent significant amounts of spectrum.[6] Given the current state of technology and the lack of interoperability between and among the services represented by 37.48 MHz of spectrum, it is hard to fathom how any benefits of an across-the-board CMRS spectrum cap could outweigh the administrative nightmare that would be created in enforcing it.

In order to determine which services should be subject to a cap, the Commission must engage in laborious examination of product and geographic markets and whether and to what degree competition exists within and among the potpourri of services now comprising CMRS. This examination also requires crystal ball gazing to devise how spectrum will be used in the future. CMRS licensees are expected by

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6 For example, the largest spectrum slice for Part 90 services is 14 MHz allocated to 800 MHz SMR services. The total amount of Part 90 spectrum subject to reclassification is 28.88 MHz. The largest non-cellular terrestrial mobile service allocation is 4 MHz for 800 MHz air-to-ground services. Including air-to-ground, the total allocation for non-cellular services is 8.6 MHz. *See* FNPRM at nn. 165, 166.

their shareholders and their investors to offer literally hundreds of new products and services in the coming years. If each new service must be subject to extensive market analysis to determine whether it is substantially similar to an offering that is subject to a cap, a licensee's enthusiasm for developing and marketing new products and services will undoubtedly be chilled.

The Commission's underlying assumption in proposing an across-the-board CMRS spectrum cap seems to be that 40 MHz is a "one-size-fits-all" limit, regardless of a potential licensee's market power in any given service area. With all due respect, this assumption is simply nonsense. The Commission cannot decide the need for a CMRS spectrum cap on nascent services such as wide-area digital ESMR systems without first developing a record on the competitive success of these licensees vis-a-vis those CMRS services providers, such as the cellular carriers, that have been identified as having market power in the mobile communications industry.[7]

The Commission's initial foray into spectrum caps in the PCS proceeding highlights the subjective and complex nature of the cap-setting process even for services within a

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7 Implementation of Sections 3 (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, 1467-72 (1994).

single category. There narrowband PCS licensees and broadband PCS licensees will be permitted to aggregate up to the maximum level of allowed spectrum in both services because the Commission apparently believes it is a good idea to allow carriers to offer both narrowband and broadband services and the maximum amount of allowed narrowband PCS spectrum holdings is small.[8] Yet, both offerings are defined as part of the PCS family under Part 99.5 of the Commission's rules. In fact, the Commission specifically declined to restrict the definition of narrowband PCS, as requested by some commenters, to paging and advanced messaging. Narrowband PCS is defined in the rules only in terms of where it operates in the spectrum--901-902 Mhz, 930-931 MHz and 940-941 Mhz.[9]

OneComm appreciates the Commission's apparent efforts to provide some flexibility to PCS service providers in their ability to bid for both narrowband and wide-band spectrum. This example, however, demonstrates the kind of case-by-case, service-by-service rulemaking that any type of cap on newly-allocated spectrum or new service offering would require.

Moreover, the exercise becomes increasingly intricate as one attempts to assess any competitive threat

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8 *See* FNPRM at n. 170.

9 47 C.F.R. §99.5.

posed by the level of spectrum holdings of service providers across the widely disparate CMRS spectrum. The Commission already has in place one spectrum cap for the largest contiguous block of spectrum. It does not appear that the public interest will be served by adding yet additional hurdles to new entrants that wish to create jobs and contribute to the growth of the country's economy.

The imposition of an across-the-board spectrum cap on clearly non-dominant CMRS licensees will only hinder their ability to further the Commission's goals of encouraging additional competition in the wireless communications market by impairing the ability of emerging competitors to obtain financing and to build relationships with strategic partners. Given the dramatically and rapidly changing landscape in the mobile services industry, according providers maximum flexibility to create new services and build advanced networks should be at the top of the Commission's agenda. But by applying an aggregate CMRS spectrum cap, the Commission will deny new entrants this needed flexibility.

B. Any Across-The-Board CMRS Cap Should Not Be Applied To SMRs At This Time

At the very least, the Commission should withhold judgment on an across-the-board spectrum cap for nascent mobile services for which the required amount of spectrum is

still being determined by the new ventures. OneComm emphatically urges the Commission not to subject SMR providers to a spectrum cap at this juncture.

First, the major SMR companies are in transition. For example, OneComm is replacing existing SMR systems that it owns and manages with digital mobile networks that are expected to increase current network capacity up to 15 times. While OneComm expects to initiate service on these digital networks in its most populated markets this year, full implementation in all operating areas is not expected until late 1996. OneComm expects to offer a full range of mobile services, including combined mobile telephone, short messaging and data transmission and combined mobile telephone, dispatch, short messaging and data transmission with a single subscriber unit. OneComm believes that the realization of this strategic vision will allow OneComm to compete effectively with other CMRS service providers, including cellular and PCS providers.

But it does not follow that because SMR providers will be able to offer substantially similar services to other CMRS providers that it makes sense to apply a strict across-the-board spectrum cap to them, certainly not at this time. The major SMR providers are still in the process of assembling wide-area systems that will permit them to deliver the advanced services described above. Under the

Commission's outdated SMR licensing scheme, SMR providers do not have access to contiguous blocks of spectrum and must acquire licenses on a station-by-station basis. In attempting to assess a spectrum cap for SMR providers, it is unrealistic to think that this regime permits a uniform measure for how much spectrum usage can be attributed to them. The Commission itself acknowledges that the way spectrum is assigned to licensees arguably can be considered when deciding which services should be subject to a cap.[10]

If the Commission concludes that an across-the-board CMRS cap is required, OneComm urges it to grandfather existing SMR providers until August 10, 1996, when they first will be classified as CMRS providers. By that time, new SMR licensing rules presumably, will be in place and wide-area SMR systems will be established. The Commission then will be better able to calculate how much spectrum an SMR actually is using. To attempt to calculate spectrum usage for SMRs at this time, particularly those building wide-area systems, is to invite arbitrary and ultimately unfair results.

If the Commission decides, nonetheless, to impose an across-the-board CMRS spectrum cap at this time, it must factor in the existing SMR licensing scheme in calculating how much spectrum usage should be allocated to SMR

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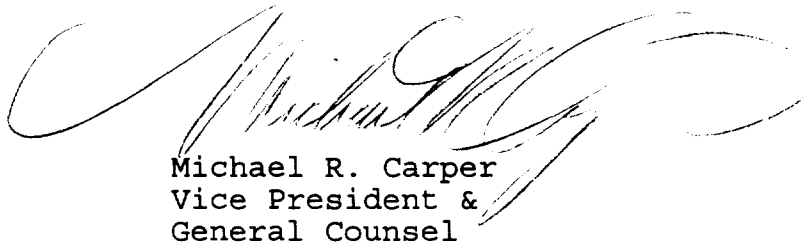
10 *See* FNPRM at ¶ 96.

providers. Although a total of 14 MHz is allocated to 800 MHz SMR providers, the frequencies are located in different spectrum blocks. Unlike cellular, where a carrier is assigned a 25 MHz block of spectrum to reuse as it wishes within its cellular geographic service area, SMR providers building wide-area systems must license their system station-by-station. This means that any single SMR site within a wide-area system may be authorized to transmit on dozens of frequencies, but those frequencies may be, and probably are, different from dozens of other frequencies on which the SMR is licensed at other sites. In addition, within a wide area system those sites serving different areas will have different numbers of frequencies. In order to achieve any reasonable calculation of spectrum usage under these circumstances, the Commission should determine the average frequency usage over the relevant market or licensing area in each case. This could be done by analyzing the number of frequencies licensed at any given site and averaging that number over the relevant geographic area. Furthermore, the conversion of channel analysis in each service must be adjusted to take into account the varying bandwidth associated with that service.

OneComm respectfully urges the Commission to develop a general framework to remove regulatory impediments that inhibit OneComm's ability to provide substantially similar services compared to other CMRS providers. OneComm also encourages the Commission to avoid the imposition of additional spectrum cap rules that will hinder emerging CMRS competitors.

Respectfully submitted,



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Vice President &
General Counsel

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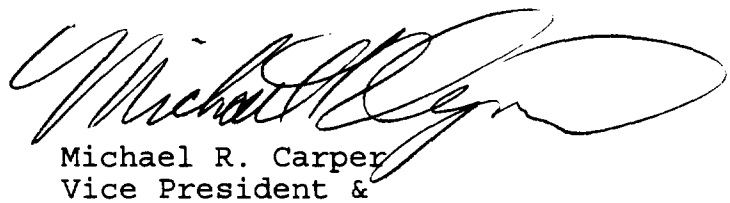

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CERTIFICATE OF SERVICE

I, Erin F. Osborne, do hereby certify that I have this 20th day of June, 1994, hand delivered copies of the foregoing document to the following:

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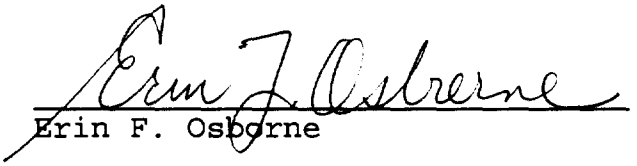

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